

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRAXYS NORTH AMERICA LLC, *et al.*

Appellants,

vs.

INTERMETAL REBAR LLC, *et al.*,

Appellees.

Case No.: 2:24-cv-02427-GMN

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 5), filed by Appellant Frank Bergen. Appellees ADR Rebar, LLC, Jose Carrero, and Intermetal Rebar, L.L.C. filed a Response, (ECF No.7), to which Appellant filed a Reply, (ECF No. 7). Also pending before the Court is the Motion to Dismiss, (ECF No. 6), filed by Appellees. Appellant filed a Response (ECF No. 9), to which Appellees filed a Reply (ECF No. 10).

Appellant Frank Bergen moves to voluntarily dismiss his appeal because he claims that additional evidence was discovered that materially affects the legal issues presented by this appeal. (Appellant's Mot. Dismiss ¶ 1, ECF No. 5). In light of the new evidence, he says that the record on appeal has not been fully developed. (*Id.* ¶ 8). He therefore moves to dismiss his appeal with all parties bearing their own fees and costs. (*Id.* 5:5–6). Appellees also move for dismissal of this appeal, but they request an order awarding Appellants their attorneys' fees and expenses incurred related to this appeal. (Appellee Mot. Dismiss at 2, ECF No. 6). Appellees argue that this was an interlocutory appeal, and thus Appellant was required by Bankruptcy Rule 8004 to file a motion for leave with the Bankruptcy Court along with his notice of appeal. (*Id.* at 3). Because Appellant failed to do so, Appellees assert that the Court should award them attorneys' fees and expenses incurred in preparation to defend this appeal. (*Id.*).

1 The Court grants Appellant's Motion to Dismiss and Appellees' Motion to Dismiss to
 2 the extent it seeks dismissal of this appeal. The Court denies Appellees' request for attorneys'
 3 fees and costs without prejudice because there was no request by separate motion. Fed. R.
 4 Bankr. P. 8020(a) ("If the district court or BAP determines that the appeal is frivolous, it may,
 5 after a separately filed motion or notice from the court and reasonable opportunity to respond,
 6 award just damages and single or double costs to the appellee."); *In re Kyle*, 317 B.R. 390, 395
 7 (B.A.P. 9th Cir. 2004) ("To the extent Federal Rule of Bankruptcy Procedure 8020 applies, the
 8 requests are rejected as not being in 'a separately file motion' as required by that rule.").¹


9 Accordingly,

10 **IT IS HEREBY ORDERED** that Appellant's Motion to Dismiss, (ECF No. 5), is
 11 GRANTED.

12 **IT IS FURTHER ORDERED** that Appellees' Motion to Dismiss, (ECF No. 6), is
 13 GRANTED, in part, and DENIED, in part. Appellees' request for attorneys' fees and costs is
 14 denied without prejudice.

15 **IT IS FURTHER ORDERD** that Appellant Bergen's appeal is DISSMISSED. The
 16 Clerk of Court is kindly directed to close this case.

17 **DATED** this 8 day of April, 2025.

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 20 _____
 21 Gloria M. Navarro, District Judge
 22 UNITED STATES DISTRICT COURT
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¹ The Court also notes that Appellees' request does not meet the requirements of Local Rule 54-14, including the requirement for a separate motion for attorneys' fees.